HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : October 29, 2007
Judgment delivered on : November 05, 2007

W.P. (C) No. 403/2007

Shri Manohar Lal ...Petitioner
! Through: Mr. K.K.Patel, Advocate.

versus

$ Union of India & Ors. ...Respondents
^ Through: Mr. Ashwani Bhardwaj, Advocate.

***CORAM:**

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

VIPIN SANGHI, J.
:

1. The Petitioner was convicted under Section 304B, 201 and 498 IPC on 27.4.2004. On the basis of the said conviction he was removed from service, while he was working as Technician Grade I with the Railways under the Railway Service Discipline and Appeal Rules 1968 vide order dated 2.2.2005. His departmental appeal was also rejected on 13.5.2005. He

approached the Central Administrative Tribunal, Principal Bench, New Delhi (The Tribunal) by filing O.A. No. 1867/2005 which has been dismissed on 1.9.2006. It is this order which impugned before us by the Petitioner.

2. The contention of the Petitioner before the Tribunal was that he had preferred an appeal against the order of conviction before the Allahabad High Court. He has been released on bail and vide order dated 30.4.2005 the Allahabad High Court had stayed the execution of the sentence in the criminal case. On this basis it was contended that once the execution of the sentence has been stayed and the appeal was pending, no action to remove him should have been taken till such time as the first appeal is decided. This submission has not been accepted by the Tribunal and, in our view rightly so.

3. The Respondents rightly pointed out and this argument was accepted by the Tribunal that merely because the execution of the sentence had been stayed and the Petitioner has been released on bail, the same did not amount to his acquittal. He was, therefore, guilty inter-alia, of being convicted in a criminal case. As noticed by the Tribunal, the Supreme Court in ***Deputy Director of Collegiate Education (Administration) Madras V. S. Nagoor Meera***, 1995 (3) SCC 377 has held that

mere suspension of sentence or release on bail by the appellate court does not render the second proviso to Article 311(2) of the Constitution inoperative. Action has to be taken under the said provision after the conviction without waiting for the conclusion of the appeal/revision or other remedies that may be available to the concerned employee. Paragraph 9 of the said judgment of the Apex Court reads as follows:

> "The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court."

4. In view of the aforesaid, the Tribunal rightly held that there was no merit in the contention of the Petitioner that he could not be proceeded with under Article 311(2) of the Constitution till his appeal against his conviction is decided, nor it can be said that punishment of removal is excessive, disproportionate or

shocking to the conscious of this court.

5. Accordingly, the present petition is dismissed with no order to costs.

VIPIN SANGHI
JUDGE

A.K. SIKRI
JUDGE

November 05, 2007
P.K. BABBAR